

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION**

THREE ZERO THREE CAPITAL	)	
PARTNERS, LLC, on behalf of itself and	)	
303 Energy Trading Alliance, LLC	)	
	)	
Plaintiff	)	
	)	No. 08 C 248
v.	)	
	)	
WILLIAM JAMISON, JR., STEPHEN	)	Judge Blanche M. Manning
HARPER, JEFFREY ONG and EVERGREEN	)	Magistrate Judge Arlander Keys
ENERGY CAPITAL, LLC	)	
	)	
Defendants.	)	

**DEFENDANT EVERGREEN ENERGY CAPITAL, LLC’S MOTION TO DISMISS  
COUNT II OF PLAINTIFFS’ VERIFIED COMPLAINT AT LAW**

Defendant Evergreen Energy Capital, LLC (“Evergreen”), by its undersigned attorneys, moves this Court, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss with prejudice Count II of the Verified Complaint at Law (“Complaint”) against Evergreen for unjust enrichment. In support of this motion, Evergreen states:

1. Plaintiffs allege that Evergreen was unjustly enriched in the amount of \$160,723.08 when Evergreen failed to repay its alleged claw-back obligation under the Trading Advisory Agreement that Evergreen and Three Zero Three entered into in July 2006.
2. Under Illinois law, when an express agreement governs the relationship between two parties, the plaintiff cannot recover under the equitable theory of unjust enrichment.
3. In this case, Plaintiffs’ claim for unjust enrichment against Evergreen is solely based upon the Trading Advisory Agreement between the Evergreen and Three Zero Three Capital Partners, LLC (“Three Zero Three”).

4. Because the relationship between Three Zero Three and Evergreen is governed by an express contract between the two, and because the facts underlying Three Zero Three's unjust enrichment claim are the subject of this express contract, Three Zero Three cannot recover on unjust enrichment grounds.

5. Accordingly, the Court should dismiss with prejudice Count II of the Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

For these reasons, as well as those stated in the supporting memorandum of law, Evergreen respectfully requests that this Court dismiss Count II with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

Dated: January 18, 2008

Respectfully submitted,

EVERGREEN ENERGY CAPITAL, LLC

/s/ Amy J. Carletti

One of its attorneys

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**CERTIFICATE OF SERVICE**

I, Amy J. Carletti, certify that service of the above instrument was accomplished pursuant to ECF upon counsel of record for plaintiffs, who is a Filing User according to the Court's General Order On Electronic Filing and by first-class U.S. Mail, postage prepaid upon:

Richard T. Reibman  
Schwartz Cooper Chartered  
180 N. LaSalle Street, Suite 2700  
Chicago, Illinois 60601

on this 18th day of January, 2008.

/s/ Amy J. Carletti

CHI99 4927739-1.081707.0011